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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

ALEJANDRO GONZALEZ ARROYO,

Defendant and Appellant.

C079988

(Super. Ct. No. 14F04543)

A jury found defendant Alejandro Gonzalez Arroyo guilty of two counts of first degree residential burglary. (Pen. Code, § 459; unless otherwise set forth, statutory references that follow are to the Penal Code.) The trial court sentenced defendant to an aggregate term of seven years four months in prison. On appeal, defendant contends the trial court erred in imposing the upper term on count one. We reject this contention and affirm the judgment.

FACTS AND PROCEEDINGS

In light of the limited issue raised on appeal, we dispense with a detailed recitation of the underlying facts and procedural history of the case. Instead, we will recite only those facts necessary for the resolution of this appeal.

In 2014, defendant and several other individuals were involved in a series of burglaries in the River Park area of Sacramento near Paradise Beach. During the course of the investigation into the burglaries, the police obtained two search warrants, including a warrant for a residence located at 3913 37th Avenue. At the time the warrants were executed, Justin Ramos and defendant were living at that address. While executing the warrants, police officers discovered a number of stolen items including a 60-inch Vizio television found in Ramos's bedroom.

Following execution of the search warrants, defendant was arrested and interviewed by the police. During the interview, defendant admitted to breaking into two or three houses. He also admitted to stealing various items, and to selling some of those items.

At trial, Ramos's best friend, David Chavez, testified for the People. He said that he overheard discussions between defendant, Ramos, and two other individuals regarding several burglaries they had committed in the Paradise Beach area. Chavez said the discussions involved how the houses were burglarized, the items that were stolen, how the items would be divided, the need for a bigger vehicle to commit more burglaries at one time, how the group could improve so they would not get caught, and the need to find a better location to burglarize houses. According to Chavez, defendant did the majority of the talking. As part of the discussions, the group explained that the burglaries would be committed as follows: "[The group] would walk down the bike trail along Paradise Beach [at around 9:00 or 10:00 p.m.] and throw rocks at the window[s] [of

houses to] . . . make sure no one was home. And after they got the sign no one was home, they would enter the house from behind off the bike trail.”

Defendant was charged by information with three counts of first degree residential burglary. (§ 459.) Following a jury trial, defendant was convicted on counts one and two, and acquitted on count three. The trial court sentenced defendant to an aggregate term of seven years four months, comprised of the upper term of six years on count one, plus a consecutive 16 months (one-third the midterm) on count two.

Defendant filed a timely notice of appeal.

DISCUSSION

Defendant contends the trial court erred in imposing the upper term on count one. According to defendant, the trial court improperly found the presence of two aggravating circumstances: (1) defendant had a leadership role in the crime; and (2) the crime involved planning and sophistication.

Burglary in the first degree is punishable by two, four, or six years in state prison. (§ 461, subd. (a).) When selecting one of the authorized prison terms, “the sentencing judge may consider circumstances in aggravation or mitigation, and any other factor reasonably related to the sentencing decision.” (Cal. Rules of Court, rule 4.420(b); further rule references are to the California Rules of Court; see rules 4.421 [circumstances in aggravation] & 4.423 [circumstances in mitigation].)

The trial court enjoys broad discretion in its sentencing decisions, which we review for abuse of discretion. (*People v. Sandoval* (2007) 41 Cal.4th 825, 847.) We must affirm the lower court’s sentencing decision “unless there is a clear showing the sentence choice was arbitrary or irrational.” (*People v. Lamb* (1988) 206 Cal.App.3d 397, 401.) A defendant “bears a heavy burden” when attempting to show the trial court has abused its sentencing discretion. (*People v. Bradley* (2012) 208 Cal.App.4th 64, 89.)

The trial court abuses its discretion “if it relies upon circumstances that are not relevant to the decision or that otherwise constitute an improper basis for decision.” (*People v. Sandoval, supra*, 41 Cal.4th at p. 847.) “ ‘[U]nless the record affirmatively indicates otherwise, the trial court is deemed to have considered all relevant criteria, including any mitigating factors.’ [Citation.]” (*People v. King* (2010) 183 Cal.App.4th 1281, 1322.) “Under California’s determinate sentencing system, the existence of a single aggravating circumstance is legally sufficient to make the defendant eligible for the upper term.” (*People v. Black* (2007) 41 Cal.4th 799, 813.)

We conclude that the trial court’s sentencing decision is amply supported by the record and was not an abuse of discretion. The court considered relevant factors in sentencing defendant and determined that an upper term sentence on count one was appropriate based on the presence of two valid aggravating circumstances: (1) defendant occupied a position of leadership in the commission of the crime; and (2) the manner in which the crime was carried out indicates sophistication and planning. (See rule 4.421(a)(4) & (a)(8).)

We are unpersuaded by defendant’s contention that the trial court erroneously relied on the presence of these aggravating factors in imposing the upper term. According to defendant, “the factual scenario placing [defendant] in a position of leadership makes little sense” because other burglaries were committed that he was not involved in. Not so. The fact that defendant may not have personally participated in all of the burglaries does not support the conclusion that defendant did not occupy a position of leadership in the commission of the burglaries. There is evidence in the record showing that defendant was a leader of the group involved in the burglaries. He led the discussions among his accomplices regarding the burglaries, which included, among other things, how the group could improve so they would not get caught, and the need to find a better location to burglarize houses. During the discussions, defendant specifically

told the group that they needed to obtain a bigger vehicle so that they could commit more burglaries at one time.

Defendant also contends that the trial court erred because the crimes in this case cannot be considered sophisticated because they did not involve planning beyond what would be an everyday burglary. We disagree. As an initial matter, defendant forfeited this claim of error by failing to raise it below. (*People v. Scott* (1994) 9 Cal.4th 331, 336.) But even if defendant's argument was properly before us, we would reject it. The repetition of the burglaries and the manner in which they were carried out indicates that the crimes were based on planning and sophistication. (See *People v. Dancer* (1996) 45 Cal.App.4th 1677, 1695 [the circumstances of an offense plus its repetition can indicate planning and sophistication], disapproved on another ground in *People v. Hammon* (1997) 15 Cal.4th 1117, 1118, 1123.) The record discloses that the crimes were not sudden and spontaneous acts. To the contrary, the evidence in the record demonstrates that defendant *planned* the burglaries in advance with a group of people. Thus, even if we agreed with defendant's contention that the crimes cannot be considered sophisticated in nature, the trial court did not abuse its discretion in relying on the planning and sophistication factor to impose the upper term. The trial court was not required to find that the crimes involved sophistication *in addition* to planning. The rule is stated in the disjunctive: it is a circumstance in aggravation if "[t]he manner in which the crime was carried out indicates planning, sophistication, *or* professionalism." (Rule 4.421(a)(8), italics added.)

Finally, we reject defendant's suggestion that the trial court erred because it failed to consider the sentences of defendant's accomplices in selecting the upper term. The sentence received by an accomplice is not among the factors in mitigation specifically enumerated in rule 4.423, and defendant has cited no authority demonstrating that this factor is relevant as a factor in mitigation. (See *People v. Vieira* (2005) 35 Cal.4th 264, 300 [In the context of a capital crime, " '[t]he sentence received by an accomplice is not

constitutionally or statutorily relevant as a factor in mitigation’ ”].) In any event, even assuming this factor was relevant to the trial court’s sentencing decision, the trial court did not abuse its discretion in selecting the upper term. A single factor in aggravation suffices to support an upper term sentence, and here the trial court properly relied on two aggravating factors in imposing such a sentence. (*People v. Black, supra*, 41 Cal.4th at p. 813.)

DISPOSITION

The judgment is affirmed.

_____ HULL _____, Acting P. J.

We concur:

_____ MAURO _____, J.

_____ HOCH _____, J.